

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service
Commission held at its office in
Jefferson City on the 4th day of
September, 2001.

In the Matter of the Application of Southwestern Bell)
Telephone Company to Provide Notice of Intent to File an)
Application for Authorization to Provide In-region InterLATA) **Case No. TO-99-227**
Services Originating in Missouri Pursuant to Section 271 of)
the Telecommunications Act of 1996.)

**ORDER DENYING MOTIONS TO RECONSIDER RECOMMENDATION
AND OPENING CASE FOR MONITORING PURPOSES**

This order denies the motions to reconsider the Commission's recommendation to the Federal Communications Commission (FCC) and opens this case indefinitely for monitoring of Southwestern Bell Telephone Company's performance under the Missouri 271 Interconnection Agreements (M2A) and the Performance Remedy Plan.

On March 15, 2001, the Commission issued its final recommendation after an extensive inquiry into Southwestern Bell's¹ compliance with the 14-point checklist in 47 U.S.C. § 271(c). In its recommendation, the Commission supported Southwestern Bell's application for in-region interLATA authority within the state of Missouri. The Commission issued a Notice Closing Case on April 2, 2001, which "closed" the Commission's official case file for administrative purposes. Southwestern Bell filed its application with the FCC on April 4, 2001. The Commission subsequently filed its comments with the FCC and

¹ Southwestern Bell Telephone Company is the wholly owned subsidiary of Southwestern Bell Communications, Inc. For ease of reference they are both referred to as "Southwestern Bell."

recommended that the FCC approve Southwestern Bell's application. On June 7, 2001, however, Southwestern Bell withdrew its application at the FCC. Southwestern Bell cited concerns raised by the United States Department of Justice and a recent appellate court decision² as its reasons for withdrawing its application.

On June 27, 2001, the Office of the Public Counsel filed a motion with the Commission. In its motion, Public Counsel requested that the Commission "reopen" its case file, reconsider its evaluation of Southwestern Bell's application, and reconsider its recommendation to the FCC. Public Counsel requested that the Commission hold additional evidentiary hearings and allow all the parties to supplement and update the record "in anticipation of the refiling of . . . [Southwestern Bell's] application." Public Counsel expressed concerns that the procedures at the FCC would be unable to address adequately and fairly the positions of the intervening and commenting parties to Southwestern Bell's refiled application.

On June 28, 2001, McLeodUSA Telecommunications Services, Inc., concurred in Public Counsel's motions. McLeod speculated that Southwestern Bell would refile its application with the FCC and that the application would contain "quite significant and highly relevant" information that had not been previously considered by the Missouri Commission. McLeod alleged performance problems with UNE-P and unbundled loop provisioning. McLeod also alleged "significant problems with SWBT's LMOS database." Finally, McLeod argued that inaccuracies in the affidavits filed by Southwestern Bell in other state's

² *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001) (mandate issued March 6, 2001). This decision is hereinafter referred to as the ASCENT decision.

Section 271 proceedings should cause Missouri to question the information it presented to the Missouri Commission.

AT&T Communications of the Southwest, Inc., also filed a motion to reopen the proceeding on June 28, 2001. AT&T asked the Commission to reopen its proceeding or to open a new case in order to examine problems with the LMOS database and the reported flow-through rates for competitive local exchange carrier orders submitted using the EDI and LEX interfaces. AT&T reported that the Public Utilities Commission of Texas had begun an audit of the LMOS data and flow-through issues and that each of the state commissions in Southwestern Bell's region were encouraged to participate. AT&T expressed its concerns that affidavits filed in the Kansas and Oklahoma proceedings contained information about the LMOS database which Southwestern Bell has since admitted to the FCC was inaccurate. AT&T indicates that this same information was relied on by the Missouri Commission in making its final recommendation to the FCC.

NuVox Communications of Missouri, Inc., the MCI WorldCom companies,³ Sprint Communications Company, L.P., and Ionex Telecommunications, Inc., also filed motions requesting the Commission to reopen and reconsider its recommendation to the FCC. Each of these competitive companies expressed similar concerns with regard to Southwestern Bell's anticipated second application to the FCC. NuVox also expressed certain performance concerns that were raised during the Commission's review of Southwestern Bell's compliance with the 14-point checklist.

³ The MCI WorldCom companies include MCI WorldCom Communications, Inc., MCI WorldCom Network Services, Inc., MCImetro Access Transmission Services, LLC, and Brooks Fiber Communications of Missouri, Inc.

The MCI WorldCom companies and NuVox jointly filed a supplemental motion on July 27, 2001. The supplement highlighted that the current terms of the M2A will expire in March of 2002.

The Staff of the Missouri Public Service Commission filed its response to the motions of Public Counsel and McLeod on June 28, 2001. Staff supported the motions of Public Counsel and McLeod “for the purpose of reviewing any new evidence upon which SWBT and its affiliated companies intend to rely in presenting their application to the FCC for § 271 authority in Missouri.” Staff also supported reopening this case, or opening a new case for the purpose of continued monitoring of Southwestern Bell’s compliance with 47 U.S.C. § 271 and the Performance Remedy Plan in Attachment 17 of the approved Missouri 271 Interconnection Agreement (M2A).

Staff also stated that it anticipated Southwestern Bell filing a second application with the FCC that would include substantial changes to the M2A. Because the Commission relied heavily on the M2A in recommending approval of Southwestern Bell’s first application, Staff recommended that the Commission review any modifications to the M2A before making further recommendations to the FCC. Staff stated, however, that it believed the requests for evidentiary hearings to be premature when filed.

On July 3, 2001, Southwestern Bell responded to the motions to reopen the case. Southwestern Bell argued that the competitive companies will have a chance to make all their arguments to the FCC after Southwestern Bell refiles its request for in-region interLATA authority in Missouri. Southwestern Bell indicated that the only result of the Commission reconsidering its previous recommendation would be unnecessary delay. Southwestern Bell argued that the performance measure issues were more appropriately

addressed in the six-month review process as set out in the Performance Remedy Plan, thus allowing the collaborative process to work. Southwestern Bell argued that the issues surrounding the ASCENT decision would also be more appropriately addressed by the FCC. Southwestern Bell also argued that when similar applications were withdrawn by it for the state of Texas and by Verizon for the state of Massachusetts, neither of those state commissions reopened their proceedings to collect additional evidence.

On August 20, 2001, Southwestern Bell refiled its application with the FCC for authority to provide in-region interLATA telecommunications services in the state of Missouri. Southwestern Bell filed this application jointly with its application for the state of Arkansas.

The Commission previously reviewed requests to direct Southwestern Bell to include Missouri data in the Texas LMOS audit and issued an order granting those requests on August 28, 2001. In addition, the Commission directed Southwestern Bell to come to the Commission and make a presentation regarding its intent to file a second application with the FCC and any changes from its first application that would be included in the second application. Southwestern Bell made a presentation to the Commission and responded to Commission questions on August 16, 2001. Southwestern Bell explained the LMOS database issue and the reduced prices it intended to offer as part of the M2A.

Also on August 16, 2001, Southwestern Bell filed a motion with the Commission asking the Commission to approve reduced rates for unbundled network elements in the M2A. The reductions were to certain prices previously found to be TELRIC-compliant in the

Commission's Case No. TO-97-40.⁴ The Commission reviewed the reductions and approved their inclusion in the M2A on August 30, 2001.

After the August 16, 2001, oral presentation by Southwestern Bell, additional comments were filed by Sprint, AT&T, and Public Counsel. Sprint again argued that the Commission should reopen the proceedings to consider the effects of the ASCENT decision. Each of the moving parties argued that the Commission should investigate further Missouri prices as compared to the states of Kansas and Arkansas. AT&T also continued to argue that the LMOS database issue raises sufficient questions of fact for the Commission to reopen this case for additional evidentiary hearings. Each of the commenting parties admitted that the lowering of prices was a "step in the right direction."

Staff filed additional suggestions to the Commission on August 28, 2001. In its suggestions, Staff advised the Commission that "Southwestern Bell's overall performance measurement results have steadily improved." Staff specifically noted that the performance measurements since the approval of the M2A are the "highest success ratios . . . to date." Staff also related information about unsuccessful performance of Southwestern Bell but indicated that Southwestern Bell had complied with the terms of the Performance Remedy Plan by paying a penalty to the state treasury. Staff highlighted other areas of Southwestern Bell's performance for previously criticized PM 58-06, PM 62-06, and PM 68-05. Staff stated that Southwestern Bell achieved parity for May, June, and July for PM 58-06 and PM 68-05. Staff stated that Southwestern Bell achieved parity in June for PM 62-06 and that for May and July there was sufficient data to calculate definitive results.

⁴ *In the Matter of AT&T Communications of the Southwest, Inc.'s Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Southwestern Bell Telephone Company.*

Staff stated that it had investigated Southwestern Bell's statement that its affiliate, SBC-Advanced Solutions, Inc., has entered into interconnection agreements with Logix Communications Corporation and DSLnet Communications, LLC, for the provisioning of advanced services in order to comply with 47 U.S. C. § 251(c) and the ASCENT decision. Those agreements were approved by the Commission in its Case Nos. TO-2001-481 and TO-2001-667. One other interconnection agreement between Southwestern Bell and IG2, Inc., is pending at the Commission in Case No. TO-2002-45. Staff concluded after its investigation of the status of these interconnection agreements that the Commission should not withdraw its support of Southwestern Bell's application based on Southwestern Bell's compliance with the ASCENT decision.

Staff summarized the current status of the three pending cases which will determine the permanent prices for the M2As.⁵ In addition, the Commission has a collocation tariff case pending⁶ in which the parties have reached a unanimous stipulation and agreement as to the rates, terms and conditions. Staff stated that in its opinion there was no change in circumstances that necessitated the reconsideration of the Commission's original recommendation to the FCC.

When the motions to reopen this case were filed the competitive companies were purely speculating about what information would be included in Southwestern Bell's second application with the FCC. What was clear was that Southwestern Bell had chosen to

⁵ Case No. TO-2001-438, *In the Matter of the Determination of Prices, Terms, and Conditions of Certain Unbundled Network Elements*; Case No. TO-2001-439, *In the Matter of the Determination of Prices, Terms, and Conditions of Conditioning for xDSL Loops*; and Case No. TO-2001-440, *In the Matter of the Determination of Prices, Terms, and Conditions of Line Splitting and Line Sharing*.

⁶ Case No. TT-2001-298, *In the Matter of Southwestern Bell Telephone Company's Proposed Tariff*, PSC Mo. No. 42 Local Access Service Tariff, Regarding Physical and Virtual Collocation.

withdraw its original application in order to address concerns of the FCC, and therefore, the process by which Southwestern Bell must abide to be granted authority to provide in-region interLATA telecommunications service in Missouri, was working.

The Commission has spent more than two years evaluating and monitoring Southwestern Bell's performance with regard to the 14-point checklist as found in Section 271 of the Telecommunications Act of 1996. The Commission has taken recent actions to ensure continued monitoring of Southwestern Bell's performance since the approval of the M2A by requesting that Missouri data be included in the LMOS audit in Texas. Southwestern Bell has also voluntarily reduced many of its prices for unbundled network elements in the state of Missouri. The Commission expects that soon those prices will be incorporated into the numerous interconnection agreements already adopted in Missouri. In addition, Southwestern Bell has assured the Commission that it intends to exercise its option and extend the terms of the M2A to March 5, 2005, upon approval of its 271 application by the FCC.

While the Commission notes that the voluntary price reductions made to the M2A were not further reduced to the levels that our sister states of Arkansas and Kansas received, the Commission determines that there is no new issue with regard to the pricing of unbundled network elements that would cause it to reconsider its previous recommendation. The fact still remains that this Commission has determined TO-97-40 prices to be TELRIC-compliant, and lowering those rates cannot logically be considered discriminatory to the competitive companies.

As to the performance of Southwestern Bell, the Commission finds that this case should remain open for the purpose of continued monitoring of Southwestern Bell's

compliance with 47 U.S.C. § 271 and the Performance Remedy Plan in Attachment 17 of the approved Missouri 271 Interconnection Agreement (M2A).

Therefore, the Commission will direct its Records Department to make the administrative designation of "open" on this case file until the Commission orders otherwise. In addition, the Commission will direct its Staff to file periodic reports in this case regarding Southwestern Bell's continued performance. The reports should include, but not be limited to the results of the six-month performance reviews, any penalties paid to the state treasury as a result of the Performance Measures Plan, recommendations for reductions of performance measures, and the results of the LMOS database audit in the state of Texas.

The Commission recognizes the benefits that additional competition in interLATA telecommunications services will bring to the state of Missouri. Given the Commission's continued monitoring, the improved performance of Southwestern Bell since the competitive companies have been operating under the M2As in Missouri, the fact that the Commission is working diligently to determine the appropriate long-term rates, subject to true-up, where those rates had not previously been set, and the fact that the M2A rates will now be lower than previously offered, the Commission finds no new information sufficient to reconsider its previous recommendation. The Commission continues to support Southwestern Bell's application for in-region interLATA authority.

IT IS THEREFORE ORDERED:

1. That the motions of the Office of the Public Counsel, AT&T Communications of the Southwest, Inc.; NuVox Communications of Missouri, Inc.; MCI WorldCom Communications, Inc., MCI WorldCom Network Services, Inc., MCImetro Access Transmission Services, LLC, and Brooks Fiber Communications of Missouri, Inc.; Sprint

Communications Company, L.P.; and Ionex Telecommunications, Inc., to reconsider the Commission's previous recommendation by reopening the case are denied.

2. That the Missouri Public Service Commission continues to support the application of Southwestern Bell for authority to provide in-region interLATA telecommunications service within Missouri.

3. That this case shall remain open for administrative purposes and for the continued receipt of periodic reports from the Staff of the Missouri Public Service Commission regarding Southwestern Bell's continued performance. The reports should include but not be limited to the results of the six-month performance reviews, any penalties paid to the state treasury as a result of the Performance Remedy Plan, recommendations for reductions of performance measures, and the results of the LMOS database audit in the state of Texas.

4. That all motions not previously ruled on are denied and all objections not previously ruled on are overruled.

5. That this order shall become effective on September 14, 2001.

BY THE COMMISSION



Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge

(S E A L)

Simmons, Ch., Murray and Lumpe CC., concur
Gaw, C., not participating

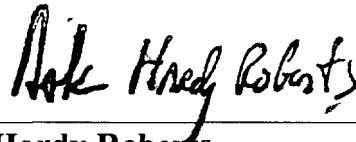
Dippell, Senior Regulatory Law Judge

STATE OF MISSOURI

OFFICE OF THE PUBLIC SERVICE COMMISSION

**I have compared the preceding copy with the original on file in this office and
I do hereby certify the same to be a true copy therefrom and the whole thereof.**

**WITNESS my hand and seal of the Public Service Commission, at Jefferson City,
Missouri, this 4th day of Sept. 2001.**

A handwritten signature in black ink, reading "Dale Hardy Roberts", written over a horizontal line.

**Dale Hardy Roberts
Secretary/Chief Regulatory Law Judge**